BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-0207-W/S

IN RE:

Application of Carolina Water Service, Inc. for adjustment of rates and charges for the provision of water and sewer service.

PRE-FILED REBUTTAL TESTIMONY OF SAMUEL B. DAVIS ON BEHALF OF APPLICANT

Q. Would you please state your name and business address?

A. My name is Samuel B. Davis and my business address is 110 Queen Parkway, West Columbia, South Carolina, 29171.

Q. Where are you employed and in what capacity?

A. I am employed by Carolina Water Service, Inc. as Regional Manager in charge of its systems operating in Lexington and Richland Counties.

Q. What is your educational and work background?

A. I received an Associate Degree in Liberal Arts from North Greenville College in 1972. I received an Associate Degree of Engineering Technology in Environmental Engineering from Central Carolina Technical College in 1977. I first became employed in the wastewater and water industry in 1975, taking a job with the Western Carolina Regional Sewer Authority. In 1977, I went to work with the City of Sumter in its utility department. In 1979, I began working with my present employer. I have held the positions of operator, operations manager, supervisor of operations, laboratory director, area manager and regional manager, which is my current position. In that position, I am responsible for the day to day operation of the water and sewer systems owned by the Company in Richland and Lexington Counties.

RETURN DATE: 01 07
SERVICE: 01 07

I am a certified Class "A" water and wastewater operator and belong to the Water Environment Federation, the Water Environment Association of South Carolina, and the American Waterworks Association. I currently serve on the Board of the Water Environment Federation. As such, I am an ex officio officer of the Water Environment Association of South Carolina.

Q. Mr. Davis, were you present at the "night" hearing the Commission conducted in connection with your Company's application for rate relief on Monday, June 25 at the Commission's offices in Columbia?

A. Yes, I was.

Q. Did you hear the testimony of Mrs. Brenda Bryant at that hearing?

A. Yes, I did.

Q. What comments, if any, do you have regarding Mrs. Bryant's testimony?

A. I have several comments. First and foremost, I would like to address the outrageous assertion made by Mrs. Bryant that the Company is somehow responsible for injuries suffered by a member of the Lexington County Fire Department while he was fighting a fire at the Windward Pointe patio home development on June 16, 2001. This statement by Mrs. Bryant is utterly false and has no basis in fact.

Q. Does the Company provide water service in Windward Pointe?

A. Yes, this development is part of our Lexington system and we provide water distribution services in it. The distribution system is connected to the bulk water supply system operated by Lexington County Joint Municipal Water and Sewer Commission.

Q. Are there fire hydrants in the development that are connected to the Company's distribution system?

A. Yes, there are two hydrants that were installed when the development was constructed. The developer obtained the necessary permits from both the Lexington County building department and DHEC, so the hydrants met all applicable standards when they were installed. These two hydrants are connected to six inch mains that run through the subdivision.

Q. Were these hydrants employed by firefighters in fighting the blaze in question?

A. No, they were not. The authorities connected the firehose to a hydrant connected to the Lexington County Joint Municipal Water and Sewer Commission's water main. This hydrant is located outside the subdivision proper, but is less than one thousand feet from the residence that burned. The fire department also utilized water from one pumper truck that responded to the fire alarm.

Q. Do you know why the hydrants connected to the Company's distribution system were not used?

A. I do not. I do understand, however, that when the firefighting authorities arrived, the residence that burned was engulfed in flames and that several of the residents were attempting to assist with fighting the fire. In the confusion, it may be that no one realized that there were hydrants located closer to the residence than the one that was used.

Q. Has there been any indication to the Company by the Lexington County Fire Department that it bears any responsibility for the injuries suffered by the firefighter?

A. None.

Q. Why then, Mr. Davis, would Mrs. Bryant make such an assertion?

A. In my opinion, Mrs. Bryant is desperate to generate controversy within the Oak Grove community about the Company and then use that to gain support for her opposition to the Company's request for rate relief. A bald and sensational accusation of the sort she made at the night hearing might be one way to do that. I would note that Mrs. Bryant's residence

is some fifteen miles away from Windward Pointe. I hope the Commission will give as much credibility to Mrs. Bryant's other testimony as this unfounded accusation deserves.

Q. Do you agree with Mrs. Bryant's assertion that the reason she was the only person appearing in opposition to the requested rate increase at the night hearing is because the Commission did not send notices of the hearing out to customers?

A. No, I do not. In my experience with rate cases before the Commission, notices of night hearings are not sent to customers. The Company is required to send all customers a copy of the original notice of filing issued by the Executive Director by way of the United States Mail. That was done in this case. Further, the Company is required to publish the notice of filing in the newspaper, which was also done in this case. Only those persons or entities that become parties of record in the case receive copies of any further notices the Commission may issue. As the Commission is aware, Mrs. Bryant is not a party of record in this case since she did not intervene in a timely fashion. So, she may not have received a copy of the notice of the night hearing. I would note, however, that if she did not, this did not prevent her from attending the night hearing.

Q. In her testimony at the night hearing, Mrs. Bryant stated that she had attended night hearings in other cases involving the Company and that hundreds of customers had attended. Is that an accurate statement?

A. Yes, as far as it goes. I would point out that the customers in those cases would not have been sent copies of the notices of those night hearings unless they were all parties of record. In my work with the Company, we have never had a proceeding where hundreds, or even dozens, of customers were parties of record. Generally, night hearings are requested by either some public official at the request of several individual customers or a group of customers. In this case, it appears that there were no customers or group of customers which sought a night hearing. Mrs. Bryant's complaint about the notice is simply a red herring to distract the Commission from much more likely reasons that no other customer appeared.

Q. And what is that reason, Mr. Davis?

A. The reasons are that, in the portion of our service area where Mrs. Bryant lives, the Company is seeking only a modest increase of $2.04 and that this is the first increase the Company has requested in more than seven years.

Q. Mr. Davis, Mrs. Bryant also stated at the night hearing that her most recent monthly billing from the Company for water and sewer services was $129.68, based upon a consumption of 24,530 gallons of water. Are these figures accurate?

A. Yes, they are.

Q. Are consumption figures and bills of that magnitude normal for the Company's customers?

A. No, but Mrs. Bryant's usage does not fit the norm for our customers.

Q. Would you please elaborate on that?

A. Yes. As the Commission is aware, Mrs. Bryant is frequently involved in billing disputes with the Company and she has a history of high consumption. For example, in August of 1996, Mrs. Bryant informally complained to the Commission about high usage shown on her bill, contending that her bill was showing monthly usage in excess of 15,000 gallons per month. At Staff's request, we reviewed Mrs. Bryant's usage for the year prior to her complaint and found that she had an average monthly consumption of 12, 919 gallons. In the same month, the Company also inspected the meter at Mrs. Bryant's residence and found it to be under-recording the actual flow and concluded that there was therefore no basis for the complaint. Even though the under-recording level (98.4% slow) fell within the Commission's parameters for meter performance (plus or minus 3%), the meter was replaced at Mrs. Bryant's request. After the meter was replaced, we had no further complaint from Mrs. Bryant until August of 1997, when she filed a formal complaint with the Commission, alleging that a sewer back-up occurred in her home as a result of a blockage in our sewer line. According to this complaint, the back-up caused a wax seal around her toilet to

deteriorate, which in turn caused the toilet to run. The Company performed a consumption analysis on Mrs. Bryant's account for the year leading up to August of 1997, which revealed an average consumption of 16,585 gallons during the period in question.

Q. Did this information resolve Mrs. Bryant's complaint?

A. Unfortunately, no. Mrs. Bryant continued to pursue her complaint. The Commission conducted a hearing and concluded that the water usage had been properly billed in its Order Number 97-1003 in Docket Number 97-358-W. The Commission also directed in that order that the Company permit Mrs. Bryant to pay the arrearages on her bill pursuant to a deferred payment agreement. Mrs. Bryant was unsatisfied by this result and petitioned the Commission to rehear or reconsider the matter. In its Order Number 97-1066, the Commission denied rehearing and found that there was simply no evidence presented by Mrs. Bryant that the water billed had not been used. The Commission further concluded that because no proof had been provided that a leak had existed and been repaired, the Company was not obligated to adjust Mrs. Bryant's bill.

Q. What happened next?

A. Rather than appealing the Commission's orders, Mrs. Bryant filed an action against the Company in magistrate's court. The Magistrate dismissed this complaint in an order dated March 12 1999, concluding in part that it had already been determined by the Commission that Mrs. Bryant had consumed the water billed and that the issue could not be relitigated. (Rebuttal Exhibit SD-1).

Q. Did that conclude the case?

A. Unfortunately not. Mrs. Bryant appealed to the circuit court. This appeal was denied by the circuit court in an order dated February 17, 2000. (Rebuttal Exhibit SD-2).

Q. Have Mrs. Bryant's usage patterns that were revealed in the course of the litigation before the Commission, the magistrate's court and the circuit court, changed?

A. Not significantly. As I indicated before, her average usage leading up to the August 1997 complaint was 16,585. We have reviewed her consumption for the past twenty-four months and have found that she averaged 16,048 gallons per month. (Rebuttal Exhibit SD-3).

Q. Mr. Davis, is it unusual for Mrs. Bryant to have monthly consumption in the range that she testified to at the night hearing?

A. Not really. In addition to the May 2001 bill, Mrs. Bryant has exceeded 20,000 gallons per month consumption on four (4) other occasions in the past two (2) years.

Q. You mentioned that Mrs. Bryant's consumption does not fit the norm for your customers. How much higher is her average consumption than the average of the Company's other customers in the I-20/ Lexington system?

A. A significant amount. Our average customer in that area uses 6,848 gallons per month, so Mrs. Bryant's average exceeds the norm by some 9,200 gallons per month.

Q. Is Mrs. Bryant's statement that she is paying more than $100 per month for water correct?

A. Not entirely. On Mrs. Bryant's most recent statement she was billed $99.95 for water. Of course, this was based upon her usage of 24,530 gallons. Also, I would point out that the average customer in the I-20/Lexington area pays $33.65 for water and $28.86 for sewer, for an average total of $62.50 per month.

Q. Does the Company require that Mrs. Bryant pay her bills in full each month?

A. No. Given her consumption, Mrs. Bryant has had much higher than average bills. Since November of 1998, we have entered into fifteen (15) separate deferred payment agreements with Mrs. Bryant under which she pays arrearages in installments. I have attached a copy of the most recent such agreement. (Rebuttal Exhibit SD-4). Under the terms of this agreement, and the Commission's rules, we have the right to terminate service if Mrs. Bryant fails to stay current on the installment and her regular bill payments.

Q. Has the Company ever been forced to terminate Mrs. Bryant's service?

A. Unfortunately, yes. Mrs. Bryant's service has been terminated on several occasions.

Q. Has the Company been able to easily terminate Mrs. Bryant's service when it was necessary?

A. No, quite to the contrary. At the night hearing, Mrs. Bryant boasted that a former Commissioner was given a tee shirt on which she was depicted sitting on a water meter. Unfortunately, this is not far from the truth. On one occasion when it was necessary to terminate her service, a car was parked over the Company's water meter in Mrs. Bryant's yard. The car stayed in that location for many days and the Company was forced to repeatedly send operators by her home for an extended period of time until we were able to find the car moved. To avoid future problems of this sort, the Company relocated the meter further out in the street right of way away from Mrs. Bryant's residence. I would note that when the Company has to go to these extraordinary lengths to protect its interests, the expenses incurred accrue to the detriment of our other customers.

Q. Is Mrs. Bryant's contention that the proposed rate adjustment for customers in the I-20/Lexington area amounts to a twenty-five percent increase accurate?

A. No, it is not. On the average bill, the amount the Company collects is $49.49 of which $28.86 is for sewer and $20.63 for water. The requested $2.04 per month increase is in the basic facilities charge, which is of course not usage sensitive. This $2.04 is only 4.1% of $49.49. For water alone, this would be an increase of 9.8%. While $2.04 is 25% of the current basic facilities charge, that is not the total amount paid by a customer to the Company on a monthly basis. So, to assert that the Company is asking for an increase of 25% of its current rates is not only incorrect, it is misleading.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF LEXINGTON	)	CA No. 98-163
Rickey and Brenda Bryant,	)	
	)	
Plaintiffs,	)	
	)	**ORDER**
vs.	)	
	)	
Carolina Water Service, Inc.,	)	
	)	
Defendant.	)	
	)	

This matter is before the court on the motions of the defendant, Carolina Water Service ("CWS"), to dismiss one of the plaintiffs' claims for lack of subject matter jurisdiction and for summary judgment on all claims. The court heard argument on the defendants' motions on May 12, 1998, and on March 2, 1999. Because the court finds that the plaintiffs' claims are barred by principles of res judicata, the defendant's motion for summary judgment is granted.

The plaintiffs, Rickey and Brenda Bryant ("the Bryants"), filed this action seeking recovery for damage to their bathroom floor allegedly resulting from a sewer backup which they contend was caused by CWS in the autumn of 1995. The Bryants also contend that the sewer backup damaged a wax seal on their toilet, causing it to leak and result in excessive water usage and higher water bills.

On August 15, 1997, the plaintiffs filed a Complaint with the South Carolina Public Service Commission ("PSC" or "Commission") contesting the amount of their water bills and asserting that "a wax seal was damaged due to a sewer backup on Carolina Water Service'[s] side of the clean-out valve." (See Def.'s Mem. Supp. Mot. Summ. J. Ex. A.) The PSC accepted prefiled testimony filed pursuant to P.S.C. Reg. 103-869(C) from both the Bryants and CWS, and

held a hearing on November 12, 1997. In an order dated November 24, 1997, the Commission found that the Bryants' water usage was properly billed by CWS. (See Def.'s Mem. Supp. Mot. Summ. J. Ex. B.) The PSC reaffirmed this decision in an order denying rehearing and reconsideration dated December 29, 1997. The Bryants did not appeal the PSC's decision to circuit court. Instead, they commenced this action in magistrate's court seeking recovery for the alleged damage to their bathroom floor and "compensation for increased water bills." CWS then filed a motion for summary judgment, alleging that the Bryants' claims were precluded on principles of res judicata, since the PSC had already adjudicated the issue of CWS's alleged negligence in maintaining its sewer main and found against the Bryants on that issue.

The doctrine of res judicata, also known as claim preclusion, stems from the principle that the public interest requires an end to litigation and that no one should be sued twice for the same cause of action. Town of Sullivan's Island v. Felger, 318 S.C. 340, 457 S.E.2d 626 (Ct. App. 1995). "A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of *res judicata* in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action." Beall v. Doe, 281 S.C. 363, 363 n.1, 315 S.E.2d 186, 189 n.1 (Ct. App. 1984).

Under South Carolina law, for res judicata to apply, a defendant must establish three elements: (1) identity of the parties or their privies; (2) identity of the subject matter; and (3) an adjudication of the issue in a former action. Plum Creek Development Co. v. City of Conway, 328 S.C. 347, 491 S.E.2d 692 (Ct. App. 1997); see also Town of Sullivan's Island v. Felger, 318 S.C. 340, 457 S.E.2d 626 (Ct. App. 1995); Briggs v. Newberry County School District, 838 F. Supp. 232 (D.S.C. 1992). Res judicata applies to administrative adjudications as well as court

proceedings. See St. Philip's Episcopal Church v. S.C. Alcoholic Beverage Control Comm'n, 285 S.C. 335, 339, 329 S.E.2d 454, 456 (Ct. App. 1985).

As stated above, the Bryants have already litigated their claim against CWS regarding the allegedly excessive water bills before the Public Service Commission, which found in a valid and final judgment on the merits that the water had been properly billed by CWS. (See Def.'s Mem. Supp. Mot. Summ. J. Ex. B at 2, Ex. C at 2.) The Bryants' current claim for "compensation for increased water bills" is precisely the same claim they brought before the PSC. Thus, this claim is clearly barred by res judicata.

Similarly, the Bryants' claim regarding the damage to their bathroom floor is precluded. Applying the three required elements outlined above, the parties in the present action are identical to those in the proceeding before the PSC. As to the requirement that the subject matter be the same, the test is whether the primary right and duty and the delict or wrong are the same in both actions. Plum Creek Development Co. v. City of Conway, 328 S.C. 347, 491 S.E.2d 692 (Ct. App. 1997). A claim is barred if it arises out of the same occurrence which was the subject of a prior action between those parties. Id.; Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992). Here, the Bryants' claims arise out of the same occurrence that was the subject of the PSC proceeding and involve the same alleged wrong—the alleged negligence of CWS in maintaining the sewer line.

The third requirement is that there be an adjudication of the issue in the former action. Plum Creek, 491 S.E.2d at 694. The Bryants argue that their claim for damage to their bathroom floor was not adjudicated before the PSC because the PSC stated that it had "no statutory authority to order the payment of damages in this type of situation. The Bryants are simply in the

wrong forum." (Def.'s Mem. Supp. Mot. Summ. J. Ex. B at 2.) Nonetheless, as CWS points out, although the PSC could not award damages relating to the bathroom floor, it still adjudicated the issue of CWS's negligence in its determination that the water was properly billed. The Bryants merely seek recovery for two kinds of damages stemming from the same alleged negligence. "For application of the doctrine of res judicata, it is not necessary that the two actions be identical with respect to the relief sought." Plum Creek Development Co. v. City of Conway, 328 S.C. 347, 491 S.E.2d 692, 695 (Ct. App. 1997).[1]

As summarized by the Commission, "[t]he gravamen of the Bryant[s'] complaint is that Carolina Water Service, Inc. caused water damage to their bathroom floor, and that, due to alleged negligence in maintaining the Company's sewer main, the Bryant[s'] toilet backed up, and that the wax seal was damaged, thereby causing excessive usage of water." (Def.'s Mem. Supp. Mot. Summ. J. Ex. B at 1-2.) Implicit in the Commission's finding that water was properly billed by CWS is the finding the CWS was not negligent in maintaining its sewer line.

The Commission received testimony from both Mrs. Bryant and from CWS on the issue of the sewer backup. The Bryants were given a full and fair opportunity to present evidence as to CWS's alleged negligence. In her prefiled testimony, Mrs. Bryant stated that "I will present evidence that Carolina Water did cause water damage to my bathroom floor and that as a result of the negligence in maintaining their sewer main my toilet backed up, damaging the wax seal which did cause a leak." (Def.'s Mem. Supp. Mot. Summ. J. Ex. D at 2.) However, despite full

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[1]Moreover, for res judicata to apply, the former proceeding need not have addressed the precise issue raised by the plaintiff. A decision is on the merits if it determines who is right as to the disputed claim. See Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918, 919 (Ct. App. 1993).

opportunity to do so, the Bryants produced no evidence whatsoever of any negligence on the part of CWS in maintaining the sewer main.

By contrast, Mr. Sam Davis of CWS testified that CWS received complaints from Mrs. Bryant about backups in her toilet and sink on October 9 and 10, 1995. (Def.'s Mem. Supp. Mot. Summ. J. Ex. E at 4.) CWS responded to both complaints and found no blockages that would prevent the flow of the sewer in their system. (Id.) In fact, as a follow up to Mrs. Bryant's complaints, CWS "televised" her service line to the main, a procedure which entails running a camera through the system to identify blockages, and still found no blockages in the CWS system. (Id.) On November 24, 1995, CWS received another complaint from Mrs. Bryant about a backup in the toilet, responded to the call, checked the sewer main and laterals, but found no problems in the system. (Id.)

Therefore, the PSC considered evidence of CWS's alleged negligence and noted that "the unrefuted evidence of record in the instant case is that the water billed for was provided." (See Def.'s Mem. Supp. Mot. Summ. J. Ex. C at 2.) In other words, there was no negligence by CWS which caused a leak in the Bryants' toilet, or similarly, damage to their floor. Although the Commission addressed only the claim for an adjustment in the water bills, it obviously received and considered evidence on the issue of the alleged negligence by CWS in maintaining the sewer main and found against the Bryants on that issue. Thus, since the issue of CWS's negligence was adjudicated before the PSC, the Bryants' claim for damages to their property stemming from that alleged negligence is also barred by the doctrine of res judicata.

For the foregoing reasons, it is

ORDERED that the defendant's motion for summary judgment is granted. The plaintiffs' time to appeal this order shall run from March 2, 1999, the date this decision was announced by the court.

IT IS SO ORDERED.

Thomas H. Rawl
Lexington County Magistrate

Lexington, South Carolina
This 12 day of March, 1999

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) APPEAL FROM MAGISTRATE'S COURT

Rickey and Brenda Bryant,)
)
Appellants,)
)
vs.)
)
Carolina Water Service, Inc.,)
) CA No. 99-CP-32-0864
Respondent.)

ORDER

This matter is before the court on the motion of the respondent, Carolina Water Service, Inc. ("CWS"), for reconsideration, clarification, or modification of the court's order filed on September 28, 1999, reversing the magistrate's entry of summary judgment for the defendant based upon res judicata and remanding the case for trial on the plaintiffs' claim for damages. The court held a hearing on CWS's motion on January 17, 2000, following the issuance of a Notice of Hearing Date filed on November 29, 1999 and served upon counsel for CWS and on the appellants. At the hearing, Paige J. Gossett, Esquire appeared for the respondent. The appellants, who are proceeding pro se, did not appear. For the reasons that follow, CWS's motion for reconsideration is granted.

The appellants, Rickey and Brenda Bryant ("the Bryants"), brought this action in Lexington County magistrate's court seeking recovery for damage to their bathroom floor allegedly resulting from a sewer backup which they contend was caused by CWS in the autumn of 1995. The Bryants contend that the sewer backup damaged a wax seal on their toilet, causing it to leak and result in excessive water usage and higher water bills.

On August 15, 1997, the appellants filed a Complaint before the South Carolina Public Service Commission ("PSC" or "Commission") contesting the amount of their water bills and asserting that "a wax seal was damaged due to a sewer backup on Carolina Water Service'[s] side of the clean-out valve" resulting in "an excess of 30,000 gal plus per billing period." (See PSC Compl.). Before the PSC, the Bryants sought an order relieving them from any obligation to pay for the water usage billed on the ground that the alleged backup gave rise to the leak, which in turn caused excessive water usage. The PSC accepted prefiled testimony from both the Bryants and CWS, and held a hearing on November 12, 1997. In an order dated November 24, 1997, the Commission found that the Bryants' water usage was properly billed by CWS. (See PSC Order No. 97-1003 at 2.) The PSC reaffirmed this decision in an order denying rehearing and reconsideration dated December 29, 1997. (See PSC Order No. 97-1066 at 2.)

The Bryants then filed the present action in magistrate's court alleging that CWS "did neglect their sewer main causing a back up in my bathroom causing approximately $2,000.00 in water damage. I am also seeking compensation for increased water bills due to the leak caused by C.W.S." (Compl. ¶ 2). CWS moved for summary judgment on the grounds that the Bryants' claim for "compensation for increased water bills" should be dismissed for lack of subject matter jurisdiction, and that all of the Bryants' claims were barred by res judicata, or alternatively, by collateral estoppel. The magistrate ruled that the Bryants' claim for negligence against CWS had already been litigated before the PSC and was barred by res judicata. The Bryants then appealed the magistrate's decision to this court. The court heard oral argument on the Bryants' appeal on June 23, 1999, and August 19, 1999.

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In its order filed September 28, 1999, the court concluded that "[t]he PSC did not adjudicate the issue of negligence *as it relates to damages.*" (Order at 2.) The court went on to observe, "It is entirely conceivable that a leak in the wax seal could cause damage to a floor every time the toilet is flushed but not be the type of leak which would result in excess water usage." (Id.) Consequently, the court reversed the judgment of the magistrate.

In its motion for reconsideration, CWS argues that summary judgment is appropriate when the pleadings show that there is no genuine issue of material fact for trial. Rule 56(c), SCRCP. A party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts." Baughman v. AT&T, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)). Moreover, a court is required to accept the allegations of the complaint as they are pleaded by the plaintiff. See Skull Creek Club v. Cook & Book, Inc., 437 S.E.2d 163, 166 (S.C. Ct. App. 1993) ("It is well settled that parties are judicially bound by their pleadings . . . . The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings . . . ."); see also SCRCP 56(c) ("[Summary judgment] shall be rendered forthwith if the *pleadings*, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.").

CWS points out that the hypothetical factual scenario raised by the court is not supported by the pleadings. It argues that the court has essentially reformed the Bryants' complaint and interpreted it to include allegations that have never been made by the Bryants. Upon further

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review of the record, the court agrees with CWS that the only allegation that has ever been made is that the alleged damage to the bathroom floor and the alleged excess water usage were causally connected, inasmuch as they both stemmed from the identical alleged leak resulting from the same alleged sewer backup. Thus, the only factual predicate for liability is the allegation that CWS improperly maintained its sewer line, which caused a backup in the Bryants' home which damaged the wax seal and caused a leak. Both types of damage were alleged to have resulted from the same negligent act. Thus, the existence of the sewer backup is the fact central to the disposition of both claims. Because the PSC found that the water was properly billed, the court agrees that it necessarily found that CWS was not negligent in maintaining the sewer line. Consequently, CWS cannot be held liable for either type of damage, whether to the bathroom floor or for the excess water usage, alleged to have resulted from this negligence. While the court's hypothetical scenario might be possible, it simply is not what was alleged by the Bryants.

The doctrine of res judicata, also known as claim preclusion, stems from the principle that the public interest requires an end to litigation and that no one should be sued twice for the same cause of action. Town of Sullivan's Island v. Felger, 318 S.C. 340, 457 S.E.2d 626 (Ct. App. 1995). Under South Carolina law, for res judicata to apply, a defendant must establish three elements: (1) identity of the parties or their privies; (2) identity of the subject matter; and (3) a final determination on the merits in the former proceeding. Briggs v. Newberry County School District, 838 F. Supp. 232 (D.S.C. 1992); Town of Sullivan's Island v. Felger, 318 S.C. 340, 457 S.E.2d 626 (Ct. App. 1995). Res judicata applies to administrative adjudications as well as court proceedings. See St. Philip's Episcopal Church v. S.C. Alcoholic Beverage Control Comm'n, 285 S.C. 335, 339, 329 S.E.2d 454, 456 (Ct. App. 1985).

The courts of South Carolina have used several tests in determining whether the subject matter of the two actions is the same. For instance, the subject matter is deemed to be the same for res judicata purposes when the two actions arise out of the same transaction or occurrence. Plum Creek Development Co. v. City of Conway, 491 S.E.2d 692 (S.C. Ct. App. 1997). Res judicata applies when the primary right and duty and the delict or wrong are the same in both actions. Id. Res judicata can apply even when the specific relief sought is different from that in the first action. Id. Similarly, res judicata applies when the prior proceeding determined which party was right as to the disputed claim. Foran v. USAA Cas. Ins. Co., 427 S.E.2d 918 (S.C. Ct. App. 1993). "If it is doubtful whether a second action is for the same cause of action as the first, the test generally applied is to consider the identity of facts essential to their maintenance, or whether the same evidence would sustain both." Pye v. Aycock, 480 S.E.2d 455, 458 (S.C. Ct. App. 1997). If res judicata applies, it bars a second action on the same claim as to issues actually litigated and issues which might have been litigated in the first action. Town of Sullivan's Island v. Felger, 457 S.E.2d 626 (S.C. Ct. App. 1995).

Application of these tests reveals that the magistrate's court complaint and the PSC complaint stem from the same transaction or occurrence—an alleged sewer backup resulting from alleged negligence by CWS—and that the primary duty and wrong are the same in both actions. Moreover, the PSC determined that CWS was right as to the disputed claim by finding that the water was properly billed. In light of the facts alleged by the Bryants, the PSC's determination that 30,000 or more gallons of water per billing period was properly billed to the Bryants mandates a finding that CWS was not responsible for the alleged leak. Since, as alleged by the

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Bryants, the water usage and the damage to the bathroom floor both stem from this alleged leak, for which the PSC found that CWS was not liable, res judicata bars the current claim.[1]

For the foregoing reasons, the court reconsiders its previous order and affirms the decision of the magistrate. It is therefore

ORDERED that CWS's motion for reconsideration is granted. It is further

ORDERED that the court's previous order filed on September 28, 1999, is vacated. It is further

ORDERED that the decision of the magistrate is **AFFIRMED.**

Clyde N. Davis, Jr.
Special Circuit Court Judge

Lexington, South Carolina
This 17th day of ~~January~~ February, 2000

[1]Alternatively, as argued by CWS, the claim is barred by the doctrine of collateral estoppel. Collateral estoppel, or issue preclusion, rests generally on equitable principles and prohibits a party from relitigating a particular issue actually decided in a prior proceeding. Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995); Watkins v. M&M Tank Lines, Inc., 694 F.2d 309, 311 (4th Cir. 1982). For collateral estoppel to apply, the party seeking issue preclusion must establish that the issue was actually litigated and directly determined in a prior action, and that the matter or fact directly in issue was necessary to support the first judgment. Town of Sullivan's Island, 318 S.C. at 344, 457 S.E.2d at 628; Beall v. Doe, 281 S.C. 263, 264, 315 S.E.2d 186, 191 (Ct. App. 1984).

CNT

264 Ashton Circle
Water Consumption History
June 1999 - May 2001

Month	Year	Consumption in Gallons Per Month	
June	1999	23,590	
July		21,990	
August		22,040	
September		18,810	
October		14,490	
November		14,630	
December		12,990	
January	2000	14,110	
February		8,940	
March		16,090	
April		12,720	
May		15,890	
June		21,020	
July		12,170	
August		15,270	
September		15,850	
October		15,690	
November		14,130	
December		13,880	
January	2001	11,230	
February		15,120	
March		16,520	
April		13,450	
May		24,530	
		385,150	Total Monthly Average 16,048

DEFERRED PAYMENT PLAN

Date 6-4-01

Name Brenda Bryant

Address 264 Ashton Cir
Lexington SC 29073

Subdivision Brighton Forest

Account # 369-001002-2

Amount of Bill $99.64 (2/25 - 3/31/01

This payment plan shall require the customer to maintain his/her account with Carolina Water Service, Inc. CURRENT and to pay not less than 1/6 of the outstanding balance. My bill of $ 99.64 divided by 6 months equals 16.61. This agreement will not exceed six (6) months. The plan begins 6-4-01 and commences on Nov 4, 2001.

16.61 6-5-01	1st payment
16.61	2nd payment
16.61	3rd payment
16.61	4th payment
16.61	5th payment
16.59	6th payment

I agree to pay Carolina Water Service, Inc. a monthly payment along with my current bill when the new bill is rendered by the company. My payment is due in the office on the date of the original agreement. It is further understood that if I do not make my monthly payments as agreed, my service will be terminated without notice. I understand the outstanding balance includes the late payment charge as authorized by the South Carolina Public Service Commission, R. 103-532.5.

I further understand that if I do not comply with this agreement and make payments accordingly, my service will be terminated. Upon termination, I will pay Carolina Water Service, Inc. the approved reconnection fee.

Brenda Bryant — 6-4-01
(Customer's Name) (Date)

Debby Lewis
Carolina Water Service, Inc.